

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 7, 2012

AMENDED IN SENATE APRIL 19, 2012

SENATE BILL

No. 1130

Introduced by Senator De León

(Principal coauthor: Assembly Member Skinner)

February 21, 2012

An act to add Chapter 13 (commencing with Section 25987.1) to Division 15 of the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1130, as amended, De León. Energy: energy assessment: ~~commercial~~ *nonresidential* buildings: financing.

Existing law requires the State Energy Resources Conservation and Development Commission to implement a program to provide financial assistance for energy efficiency projects.

This bill would enact the ~~Commercial~~ *Nonresidential* Building Energy Retrofit Financing Act of 2012 and would require the commission to establish the ~~Commercial~~ *Nonresidential* Building Energy Retrofit Financing Program and to hire a third-party administrator by July 1, 2013, to develop and operate the program to provide financial assistance, through authorizing the issuance of, among other things, revenue bonds, to owners of eligible ~~commercial properties~~ *nonresidential buildings* for implementing energy improvements for their properties. The bill would provide that the bonds are secured by the recording of an energy remittance repayment agreement, as defined, on the deed of the property for which the improvements are performed. The bill would require the

State Board of Equalization to collect installment payments from owners of eligible properties whose applications have been approved by the commission.

This bill would require the commission to meet, for the purpose of approving applicants to participate in the program and authorizing the issuance of, among other things, negotiable bonds to generate moneys sufficient to finance energy efficiency retrofit measures specified on applications that have been approved prior to the meeting. The bill would authorize the ~~Treasurer~~ *California Alternative Energy and Advanced Transportation Financing Authority, on behalf of the commission*, to issue and renew the negotiable bonds.

This bill would establish the ~~Commercial~~ *Nonresidential* Building Energy Retrofit Debt Servicing Fund, the Loan Loss Reserve Account, and the Administration Account within the fund. The bill would require the State Board of Equalization to deposit the installment payment received from the owners of eligible ~~properties~~ *buildings* into the fund and the fees collected into the specified accounts. The bill would continuously appropriate the moneys in the fund and the accounts to repay the principal and interest on the bonds, and to cover the administrative costs incurred by the ~~Treasurer~~ *authority*, the commission, and the State Board of Equalization, thereby making an appropriation.

The bill would require the Director of Finance to transfer, as a loan, up to \$1,000,000, to the authority, and up to \$7,000,000, to the commission, from the General Fund for the purposes of implementing the program. The bill would require the loans to be repaid on or before January 1, 2023.

Existing law establishes incentives in the form of grants and loans to low-income residents, small businesses, and residential property owners for constructing and retrofitting buildings to be more energy efficient.

The bill would also require the State Energy Resources Conservation and Development Commission to analyze and evaluate standards for ~~commercial~~ *nonresidential* energy building.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 13 (commencing with Section 25987.1)
- 2 is added to Division 15 of the Public Resources Code, to read:

1 CHAPTER 13. ~~COMMERCIAL~~ NONRESIDENTIAL BUILDING
2 ASSESSMENT FINANCING
3

4 Article 1. General Provisions and Definitions
5

6 25987.1. This act shall be known, and may be cited, as the
7 ~~Commercial~~ Nonresidential Building Energy Retrofit Financing
8 Act of 2012.

9 25987.2. The purpose of this chapter is to facilitate private
10 financing to enable private ~~commercial~~ nonresidential building
11 owners and eligible public entities to invest in clean energy
12 improvements, renewable energy, and conservation, to incentivize
13 private equity managers to invest in clean energy improvements,
14 integrate the smart energy economy, and to stimulate the state
15 economy by directly creating jobs for contractors and other persons
16 who complete new energy improvements, and to reinforce the
17 leadership role of the state in the new energy economy, thereby
18 attracting energy manufacturing facilities and related jobs to the
19 state.

20 25987.3. The Legislature finds and declares all of the following:

21 (a) ~~Commercial~~ Nonresidential buildings represent a huge
22 opportunity to significantly increase energy efficiency and reduce
23 greenhouse gas emissions. To do this, we need to address the
24 design, construction, and operation of these buildings.

25 (b) The lack of accessible and affordable financing for energy
26 efficiency retrofits results in energy-inefficient buildings that are
27 estimated to consume up to 50 percent more energy than required
28 to achieve the same level of comfort. Energy use in the building
29 sector accounts for approximately 20 percent of global emissions
30 of carbon dioxide, or 10 billion tons, annually.

31 (c) It is possible to retrofit the California ~~commercial~~
32 nonresidential building stock to use, on average, at least 50 percent
33 less energy by 2050 through the wide adoption of deep energy
34 retrofits that save more energy and increase profits for building
35 owners.

36 (d) Investment in building performance upgrades is an intelligent
37 business decision. Building performance upgrades lower operating
38 costs, improve occupant comfort, hedge against utility price
39 increases, demonstrate commitment to tenant well-being, reduce

1 exposure to regulation, help the environment, and ultimately boost
2 property values.

3 (e) It is in the best interest of the state and its citizens to enable
4 and encourage the owners of eligible ~~commercial~~ *nonresidential*
5 property to invest in new energy improvements, including energy
6 efficiency improvements *that qualify for investor-owned utility or*
7 *publicly-owned utility programs*, water efficiency improvements,
8 and renewable energy improvements, by enacting this division to
9 establish, develop, finance, implement, and administer a new
10 energy improvement program that provides for both energy
11 efficiency improvements and renewable energy improvements and
12 to assist those owners who choose to participate in the program to
13 complete new energy improvements to their properties because of
14 the following:

15 (1) New energy improvements, including energy efficiency
16 improvements and renewable energy improvements, can provide
17 positive cashflow when the costs of the improvements are spread
18 out over a long enough time that building's cumulative utility bill
19 cost savings exceed the amount of the liens recorded on the eligible
20 buildings to ~~assure~~ *ensure* payment for the improvements.

21 (2) Many owners of eligible ~~commercial~~ *nonresidential*
22 buildings are unable to fund a new energy improvement because
23 the owners do not have sufficient liquid assets to directly fund the
24 improvement or are unable or unwilling to incur the negative net
25 cashflow likely to result if the owner uses a typical existing loan
26 program to fund the improvement.

27 (f) Reduction in the amount of emissions of greenhouse gases
28 and environmental pollutants resulting from increased efficiencies
29 and the resulting decreased use of traditional nonrenewable fuels
30 will improve air quality and may help to mitigate climate change.

31 (g) The ~~commercial~~ *nonresidential* building owners who
32 participate in the program established pursuant to this division to
33 assist them in completing new energy improvements, including
34 energy efficiency improvements and renewable energy
35 improvements, to the property shall do so voluntarily.

36 25987.4. Unless the context otherwise requires, for the purposes
37 of this ~~division~~ *chapter*, the following terms have the following
38 meanings:

39 (a) (1) "Alternative sources of energy" or "alternative energy
40 sources" means energy from renewable cogeneration or gas-fired

1 *cogeneration technology that meets the greenhouse gas emissions*
2 *and efficiency standards applicable to the Self-Generation*
3 *Incentive Program in effect at the time of the application, energy*
4 *storage technologies, or energy from solar, biomass, wind, or*
5 *geothermal systems, or fuel cells, or any other source of energy*
6 *that reduces greenhouse gas emissions, the efficient use of which*
7 *will reduce the use of conventional energy fuels.*

8 (2) *The system shall be sized appropriately to offset part or all*
9 *of the applicant's own electricity demand and shall be located on*
10 *the same premises of the application where the applicant's own*
11 *electrical demand is located.*

12 ~~(a)–~~

13 (b) “Applicant” means a person, or an entity or group of entities,
14 engaged in business or operations in the state, whether organized
15 for profit or not for profit that *owns a nonresidential building and*
16 *applies for financial assistance from the commission for the*
17 *purpose of implementing a project in a manner prescribed by the*
18 *commission.*

19 ~~(b) “Alternative sources of energy” or “alternative energy~~
20 ~~sources” means energy from cogeneration technology, the~~
21 ~~conservation of energy, or energy from solar, biomass, wind,~~
22 ~~geothermal, or any other source of energy, the efficient use of~~
23 ~~which will reduce the use of conventional energy fuels.~~

24 (c) “Authority” means the California Alternative Energy and
25 Advanced Transportation Financing Authority established pursuant
26 to Section 26004.

27 ~~(e)–~~

28 (d) “Board” means the State Board of Equalization.

29 ~~(d) “Commercial Building Energy Retrofit Bond” means a bond~~
30 ~~issued pursuant to Section 26987.28 that is secured by an energy~~
31 ~~remittance repayment agreement on property entered into~~
32 ~~voluntarily to finance the installation of renewable energy sources;~~
33 ~~energy efficiency improvement or retrofits, or water efficiency~~
34 ~~improvements.~~

35 (e) “Conventional energy fuel” means any of the following:

36 (1) A fuel derived from petroleum deposits, including, but not
37 limited to, oil, heating oil, gasoline, and fuel oil.

38 (2) Natural gas, including liquified natural gas.

39 (3) Nuclear fissionable materials.

1 (f) “Demand response” means ~~energy storage, controls, and~~
2 ~~associate equipment that permits altering the timing of energy~~
3 ~~demand in return for economic reward based on time of use pricing~~
4 ~~or demand response incentive reductions or shifts in electricity~~
5 *consumption by customers in response to either economic or*
6 *reliability signals.*

7 (g) “Eligible building” means ~~a commercial or industrial~~
8 *nonresidential building that completed construction on or before*
9 *January 1, 2013 and located within the boundaries of the state.*

10 (h) “Energy efficiency improvement ~~or retrofit~~” means one or
11 ~~more installations or modifications to an eligible property building~~
12 *for which a building permit was not obtained before January 1,*
13 *2013 and that* ~~are~~ *is* designed to reduce the energy consumption
14 of the building and ~~includes; that qualifies for investor-owned~~
15 *utility or publicly-owned utility energy efficiency programs that*
16 *may include,* but is not limited to, all of the following *to the extent*
17 *they qualify:*

18 (1) High-efficiency mechanical equipment.

19 (2) High-efficiency electrical equipment.

20 (3) Capturing or reducing heat gain or solar shading, including
21 the roof and south and west walls, and not just glazing.

22 (4) High-efficiency water heating.

23 (5) Insulation in walls, roofs, floors, and foundations and in
24 heating and cooling distribution systems.

25 (6) ~~Storm windows and doors, multiglazed windows and doors,~~
26 ~~heat-absorbing or heat-reflective glazed and coated window and~~
27 ~~door systems, additional glazing, Fenestration and door~~
28 *replacement,* reductions in glass area, and other ~~window and door~~
29 ~~system fenestration and door modifications that reduce energy~~
30 ~~consumption.~~

31 (7) Automatic energy control systems.

32 (8) Heating, ventilating, or air conditioning and distribution
33 system modifications or replacements.

34 (9) Caulking and weather stripping.

35 (10) Replacement or modification of ~~lighting fixtures~~ *luminaries*
36 *to increase the energy efficiency of the system, or additional*
37 *lighting controls to reduce electric lighting during period of*
38 *vacancy.*

39 (11) Energy recovery ~~and energy storage~~ systems.

1 (12) Daylighting systems *and associated lighting controls for*
2 *daylight harvesting.*

3 (13) A modification, installation, or remodeling approved as a
4 utility cost-savings measure by the ~~State Energy Resources~~
5 ~~Conservation and Development Commission~~ *commission*, and
6 which may include measures described in the Database for Energy
7 ~~Efficiency~~ *Efficient* Resources (~~DEER~~) overseen by the ~~California~~
8 Public Utilities Commission (~~CPUC~~) and utilized by
9 investor-owned utilities and energy efficiency specialists
10 participating in their Energy Efficiency (~~EE~~) programs.

11 (14) *Plug load solutions.*

12 (15) *Building commissioning or retrocommissioning*

13 (i) “Energy remittance repayment agreement” means a
14 contractual agreement between an eligible building owner and the
15 commission, secured by a lien, *as described in Section 25987.21,*
16 *recorded in the county where the property is situated and on an*
17 *eligible building specially benefited by a new energy improvement*
18 *for which the commission will make reimbursement or a direct*
19 *payment to the party financing the energy improvements, and*
20 “contractual energy remittance” means that reimbursement or
21 direct payment. The amount to be repaid pursuant to the energy
22 remittance repayment agreement shall include the costs necessary
23 to finance the energy efficiency improvements less any rebates,
24 grants, and other direct financial assistance received by the owner
25 pursuant to other law and a loan loss reserve fee ~~that is not less~~
26 ~~than 1.5 percent in an amount~~ to be established by the program
27 ~~administrator of the financing costs in consultation with the~~
28 ~~commission and the warehouse financier under contract entered~~
29 ~~into pursuant to paragraph (8) of subdivision (a) of Section~~
30 ~~25987.25 to insure against nonperformance of the loan and other~~
31 ~~losses of the program, and a program administrative cost fee.~~

32 (j) “Energy efficiency specialist” means an individual or
33 business certified by rules ~~or requirements of the State Energy~~
34 ~~Resources Conservation and Development Commission, the Public~~
35 ~~Utilities Commission, an investor-owned utility, or a publicly~~
36 ~~owned utility of the commission~~ to analyze, evaluate, or install a
37 renewable energy source, energy efficiency improvement, or water
38 efficiency improvement for eligible property.

39 (k) “Financial assistance” means either of the following:

(1) Loans, loan loss reserves, interest rate reductions, secondary loan purchase, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by a resolution of, the commission.

(2) Other types of assistance the commission determines is appropriate.

(l) “Loan balance” means the outstanding principal balance of loans secured by a mortgage or deed of trust with a first or second lien on eligible property.

(m) “Loan loss reserve fee” means a fee ~~paid by a combination of banks, loan recipients, and government agencies,~~ that serves as collateral in the event of a loan default.

(n) “*Nonresidential Building Energy Retrofit Bond*” means a bond issued pursuant to Section 25987.31 that is secured by an energy remittance repayment agreement on property entered into voluntarily to finance the installation of renewable energy sources, energy efficiency improvement or retrofits, or water efficiency improvements.

~~(n)~~

(o) “Participant” means a person, or an entity or group of entities, engaged in business or operations in the state, whether organized for profit or not for profit, that, as a qualified applicant is approved for financial assistance pursuant to Article 2 (*commencing with Section 25987.5*) of this chapter and has entered into an energy remittance repayment agreement with the commission for the purpose of implementing a project in a manner prescribed by the commission.

~~(o)~~

(p) “Portfolio” means an aggregation of approved applications.

~~(p)~~

(q) “Program” means the ~~Commercial~~ *Nonresidential Building Energy Retrofit Financing Program* established by the commission in accordance with Section ~~26987.7~~ 25987.7.

~~(q)~~

(r) “Program administration cost fee” ~~mean~~ means a fee imposed for the costs incurred by the commission, the ~~Treasurer~~ authority, and the State Board of Equalization to administer the program.

~~(r)~~

(s) “Project” means ~~a building, an improvement to the land or an eligible building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, that utilizes water efficiency improvements, alternative sources that constitutes a water efficiency improvement, alternative source of energy, or energy efficiency improvements improvement.~~

~~(s)–~~

(t) “Qualified applicant” means a person or business entity who does all of the following:

(1) Owns an eligible building that has a ratio of loan balance to its appraised value not to exceed 85 percent and subject to adjustment by the program administrator at the time the person’s program application is approved, as shown in the records of the county assessor, unless the holder of the deed of trust or mortgage recorded against the eligible property that has priority over all other deeds of trust or mortgages recorded against the eligible property has consented in writing to the recording of an energy remittance repayment agreement pursuant to this division against the eligible property.

(2) Timely submits to the commission a complete application, which notes the existence of any first priority mortgage or deed of trust on the eligible property and the identity of the holder of the mortgage or deed of trust, to join the program and consents to the levying of a special assessment on the property pursuant to this chapter.

(3) Meets standard of credit worthiness that the commission may establish.

~~(t)–~~

(u) “Renewable energy” means heat, processed heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, *fuel cells*, or energy in any form convertible to these uses, ~~whether produced or conserved, and including energy storage technologies,~~ that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

(1) Biomass.

(2) Solar thermal.

(3) Photovoltaic.

(4) Wind.

1 (5) Geothermal.

2 ~~(u)~~

3 (v) “Renewable energy improvement” means one or more
4 fixtures, products, systems, or devices, or an interacting group of
5 fixtures, products, systems, or devices, that directly benefit an
6 eligible ~~property~~ *building* or that are installed on the ~~user~~ *customer*
7 side of an ~~electric~~ *a meter of an eligible property building* and that
8 produce *renewable* energy from renewable resources, including,
9 but not limited to, photovoltaic, solar thermal, small wind,
10 ~~low-impact hydroelectric~~, biomass, *fuel cells*, or geothermal
11 systems such as ground source heat pumps, as may be approved
12 by the commission.

13
14 Article 2. ~~Commercial~~ *Nonresidential* Building Energy Retrofit
15 Financing Program

16
17 25987.5. The purpose of the ~~Commercial~~ *Nonresidential*
18 Building Energy Retrofit Financing Program is to help provide
19 the special benefits of water efficiency improvements, alternative
20 energy, and energy efficiency improvements to owners of eligible
21 ~~property buildings~~ who voluntarily participate in the program by
22 establishing, developing, financing, and administering a program
23 to assist those owners in completing improvements.

24 25987.6. The commission shall have and exercise all rights
25 and powers necessary or incidental to or implied from the specific
26 powers granted to the commission by this ~~division~~ *chapter*. Those
27 specific powers shall not be considered as a limitation upon any
28 power necessary or appropriate to carry out the purposes and intent
29 of this chapter.

30 25987.7. (a) The commission shall establish, develop, finance,
31 and administer pursuant to Section 25987.9 the ~~Commercial~~
32 *Nonresidential* Building Energy Retrofit Financing Program. The
33 program shall be designed to provide financial assistance for an
34 owner of an eligible building to use one or more energy efficiency
35 specialists to retrofit the property with one or more alternative
36 energy sources or renewable energy improvements, energy
37 efficiency improvements, or water efficiency improvements, by
38 applying to the commission for inclusion of the owner’s project
39 in a portfolio that will be financed through the use of the revenue
40 bonds issued pursuant to this chapter. These bonds shall be secured

1 by revenues generated through energy remittance repayment
2 agreements recorded on the buildings benefited by the projects in
3 the portfolio. The

4 (b) (1) The program shall provide financial assistance for energy
5 efficiency improvements when the total energy and water cost
6 savings realized by the property owner, and any successor or
7 successors to the property owner, during the useful life of the
8 improvements, as determined by an analysis required pursuant to
9 subdivision (i) of Section ~~26987.13~~ 25987.13 are expected to *equal*
10 or exceed the total costs incurred by the owner pursuant to the
11 program.

12 (2) The commission may waive the requirements of paragraph
13 (1) by adopting a specific finding that additional improvements
14 may be undertaken that significantly increase energy efficiency
15 and increase public health.

16 (c) In developing rules to certify an energy efficiency specialist,
17 the commission shall consult with the Public Utilities Commission,
18 the investor-owned utilities, the contractor community, and other
19 entities the commission deems appropriate and consider existing
20 trade certifications or licensing requirements applicable to
21 occupations that perform work contemplated pursuant to this
22 chapter.

23 25987.8. To receive financial assistance pursuant to this
24 chapter, a qualified applicant shall contractually agree to the
25 recording of an energy remittance repayment agreement on the
26 eligible building that is being retrofitted.

27 25987.9. By July 1, 2013, the commission shall develop a
28 request for proposal to develop the program by a third-party
29 administrator and for the third-party administrator to administer
30 the program and establish an automated, asset-based underwriting
31 system for all eligible ~~properties~~ buildings in the state. The party
32 selected as the third-party administrator shall only be selected if
33 the program ~~by the party~~ submitted by the party requires all costs,
34 including start-up costs of the program, to be covered by the loan
35 recipients, the administrator, the bond purchasers, or some
36 combination thereof. The program selected shall not include
37 General Fund costs or liabilities, with the exception of loans from
38 the General Fund pursuant to Section 25987.41 utilized for start-up
39 costs, ~~that shall be repaid within two years.~~

1 25987.10. The third-party administrator shall establish
2 underwriting guidelines that consider an applicant's qualification,
3 and other appropriate factors, including, but not limited to, credit
4 reports and loan-to-value ratios, consistent with good and
5 customary lending practices, necessary for the ~~Treasurer~~ *authority*
6 to obtain a bond rating for bonds issued pursuant to Article 3
7 (commencing with Section 25987.28) for a successful bond sale.

8 25987.11. The third-party administrator shall disclose to an
9 owner of a ~~commercial~~ *nonresidential* building all fees imposed
10 pursuant to this chapter, including the loan loss reserve fee, the
11 program administration cost fee, and the interest rate charged, prior
12 to the submission of an application by the building owner.

13 25987.12. (a) An owner of an eligible building who wishes to
14 undertake an ~~energy efficiency project~~ *improvement* shall submit
15 to the third-party administrator an application to participate in the
16 program.

17 (b) The submission of an application is deemed to be a voluntary
18 agreement by the owner for the commission to record the energy
19 remittance repayment agreement on the deed of the eligible
20 building upon the approval of the application.

21 (c) The application form developed by the third-party
22 administrator shall include a statement in no less than 12-point
23 type stating the following:

24 SUBMISSION OF THIS APPLICATION CONSTITUTES THE
25 VOLUNTARY CONSENT OF THE APPLICANT FOR THE
26 RECORDATION OF THE ENERGY REMITTANCE
27 REPAYMENT AGREEMENT ON THE DEED OF THE
28 ELIGIBLE PROPERTY. UPON THE APPROVAL BY THE
29 COMMISSION OF THE APPLICATION AND THE
30 RECORDATION OF THE ENERGY REMITTANCE
31 REPAYMENT AGREEMENT, A LIEN IN THE AMOUNT
32 SPECIFIED IN THE ENERGY REMITTANCE REPAYMENT
33 AGREEMENT SHALL BE SECURED BY THE PROPERTY.

34 25987.13. The owner of an eligible building shall include all
35 of the following information in the application:

36 (a) The name, business address, and e-mail address of the owners
37 of the eligible building.

38 (b) The names of all entities that hold a secured lien on the
39 eligible building and their contact information.

1 (c) The total dollar amount of liens that have been recorded on
2 the eligible building.

3 (d) An appraisal of the value of the eligible building *that has*
4 *been conducted within the past six months or during an appropriate*
5 *timeframe consistent with industry practices for underwriting of*
6 *nonresidential buildings.*

7 (e) A detailed description of the energy efficiency improvements
8 being funded.

9 (f) The name of the financial institution providing interim
10 financing for the improvements or the warehouse facility developed
11 pursuant to Section 25987.26.

12 (g) The structure of the loan financing the energy efficiency
13 improvements.

14 (h) Any information that the commission or third-party
15 administrator requires to verify that the owner will complete the
16 project.

17 (i) An analysis performed by an energy efficiency specialist to
18 quantify the costs of the energy and water efficiency improvements,
19 and total energy and water cost savings realized by the owner, or
20 his or her successor during the *effective* useful life of, and estimated
21 carbon impacts of, the improvements, including an annual cash
22 flow analysis.

23 (j) *Copies of an application that have been made for energy*
24 *efficiency incentives identified pursuant to subdivision (d) of*
25 *Section 25987.19 for any applicable retrofits.*

26 ~~(j)~~

27 (k) Other information deemed necessary by the commission or
28 the third-party administrator.

29 25987.14. (a) In addition to the information required under
30 ~~Section 25987.13~~ 25987.13, an applicant shall provide in the
31 application a detailed description of the property and a detailed
32 ~~description of the~~ *all of the following:*

33 (1) *The eligible building.*

34 (2) *The* transactional activities associated with the *eligible*
35 improvements, including ~~all the~~ *transactional costs and other costs.*

36 (3) *Other* information deemed necessary by the commission or
37 the third-party administrator.

38 (b) An applicant shall agree in the application to remit repayment
39 installments due by an electronic funds transfer under procedures
40 prescribed by the board.

1 25987.15. (a) The third-party administrator shall recommend
2 to the commission on the approval or disapproval of an application.

3 (b) The commission may approve and accept *an applicant* into
4 the program ~~only those applicants that meet~~ *when* both of the
5 following conditions *are met*:

6 (1) The applicant is a qualified applicant.

7 ~~(2) For improvements that exceed five hundred thousand dollars~~
8 ~~(\$500,000), the property owner shall obtain a guarantee on the~~
9 ~~energy and water cost savings as quantified by the analysis required~~
10 ~~pursuant to subdivision (i) of Section 26987.13 by obtaining energy~~
11 ~~savings insurance issued by an A.M. Best “A” or better rated carrier~~
12 ~~or a similar product adopted by regulation by the commission.~~

13 (2) *Prior to receiving funding for renewable energy improvement*
14 *or alternative energy sources the applicant shall show both of the*
15 *following:*

16 (A) *Evidence of intent to make feasible energy efficiency*
17 *upgrades recommended by the analysis required pursuant to*
18 *subdivision (i) of Section 25987.13.*

19 (B) *Evidence of intent to enroll in eligible demand response*
20 *programs, if appropriate.*

21 (c) *The commission shall determine appropriate guarantees*
22 *necessary to ensure cost neutrality of the improvements that may*
23 *include the requirement that the owner of the eligible building*
24 *obtaining insurance issued by an A.M. Best “A” or better rated*
25 *insurance carrier or a similar product as approved by the*
26 *commission.*

27 25987.16. (a) Upon the mutual agreement of the participant
28 and the third-party administrator, the third-party administrator
29 shall establish an annualized schedule for the repayment required
30 by the energy remittance repayment agreement, including the
31 interest charged, administrative cost fee, and loan loss fee.

32 (b) The board shall collect the repayment installments that
33 become due and payable.

34 (c) (1) The period for repayment of the energy remittance
35 repayment agreement shall not exceed the ~~expected~~ *effective* useful
36 life of the improvements or 20 years, whichever is shorter.

37 (2) The ~~calculated-expected~~ *effective* useful life of the energy
38 efficiency improvements shall be calculated using methodologies
39 ~~approved adopted~~ *by the commission for performing those*
40 ~~calculations~~, *in consultation with the Public Utilities Commission.*

1 *The commission shall adopt the methodologies at a publicly noticed*
2 *meeting offering all interested parties an opportunity to comment.*
3 *The commission shall provide a public notice at least 30 days prior*
4 *to the meeting at which the methodology is scheduled for adoption.*
5 *The commission shall provide a public notice at least 10 days prior*
6 *to a meeting at which a substantive change is proposed to the*
7 *methodology. Notwithstanding other laws, the methodologies*
8 *adopted pursuant to this paragraph shall be exempted from the*
9 *requirements of Chapter 3.5 (commencing with Section 11340) of*
10 *Part 1 of Division 3 of Title 2 of the Government Code.*

11 (d) Upon the failure of the participant to pay any installment
12 toward the repayment of the energy remittance repayment
13 agreement when the installment becomes due and owing pursuant
14 to the schedule for repayment, the board shall assess a penalty on
15 the delinquent payment of 10 percent of the unpaid installment.

16 (e) Within 60 days of a failure to pay the scheduled energy
17 remittance, the board shall issue a demand letter to the participant
18 with notice provided to the commission and provide the participant
19 with 30 days to cure the default.

20 (f) (1) If the participant fails to cure the default within the time
21 allotted, the board ~~shall~~ *may* declare the entire outstanding energy
22 remittance repayment agreement balance, including any interest
23 due, penalties assessed, and costs of collection incurred,
24 immediately due and owing and foreclose on the energy remittance
25 repayment agreement *by either judicial or nonjudicial foreclosure.*

26 (2) Revenue generated from the sale of the eligible building
27 shall be distributed to satisfy liens on the eligible building in
28 accordance with the priority of the liens as provided by law.

29 ~~(g) A participant who is not in default may pay the entire unpaid~~
30 ~~balance of the energy remittance repayment agreement plus any~~
31 ~~interest accruing to the maturity of the next installment payment~~
32 ~~without prepayment penalty.~~

33 ~~(h)~~

34 (g) Upon the full repayment of the balance of the energy
35 remittance repayment agreement, and interest and penalties that
36 had accrued, the ~~State Board of Equalization~~ *board* shall notify
37 the commission of that repayment. Within 30 days of the receipt
38 of the notice, the board shall record with the county in which the
39 eligible building is located a release of the energy remittance
40 repayment agreement.

1 25987.17. (a) A participant shall remit repayment installments
2 due by an electronic funds transfer to the board under procedures
3 prescribed by the board.

4 (b) Any participant remitting amounts due pursuant to
5 subdivision (a) shall perform electronic funds transfers in
6 compliance with the due dates prescribed in the schedule for
7 repayment. Payment is deemed complete on the date the electronic
8 funds transfer is initiated if settlement to the state's demand account
9 occurs on or before the banking day following the date the transfer
10 is initiated. If settlement to the state's demand account does not
11 occur on or before the banking day following the date the transfer
12 is initiated, payment is deemed to occur on the date settlement
13 occurs.

14 (c) Any participant who remits a repayment installment by
15 means other than appropriate electronic funds transfer shall pay a
16 penalty of 10 percent of the repayment installment incorrectly
17 remitted.

18 (d) The board may prescribe, adopt, and enforce regulations
19 relating to the collection of the installment repayment pursuant to
20 the Administrative Procedure Act (Chapter 3.5 (commencing with
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code) for purposes of collecting energy remittance repayment
23 installments.

24 25987.18. (a) Prior to approving an application for inclusion
25 into a loan portfolio and the recordation of the energy remittance
26 repayment agreement, or a modification of an approved application,
27 the commission shall conduct a public hearing on the application
28 or modification.

29 (b) The commission shall post a notice of the hearing on the
30 commission's Internet Web site and provide the notice, in writing,
31 to all lienholders of the eligible building no later than 30 days prior
32 to the hearing.

33 (c) The notice shall specify all of the following:

34 (1) The name of the qualified applicant.

35 (2) The address of the eligible building.

36 (3) The amount required to be repaid by the energy remittance
37 repayment agreement proposed to be recorded on the eligible
38 building.

39 (4) The date and place of the public hearing.

1 (5) The schedule for repayment of the contractual energy
2 remittance and associated costs as agreed upon between the
3 qualified applicant and the commission.

4 (6) The interest rate assessed pursuant to the energy remittance
5 repayment agreement.

6 (7) A detailed description of the proposed modification, if
7 applicable.

8 (d) The notice shall inform the lienholder that any complaints
9 or objections to either the approval of the application and the
10 recordation of the energy remittance repayment agreement on the
11 eligible building or the modification of an approved application
12 shall be submitted, in writing, to the commission *not less than 10*
13 *days* prior to the hearing.

14 ~~25987.19. At the public hearing, the commission shall consider~~
15 ~~and resolve all complaints and objections made.~~

16 ~~25987.20.~~

17 25987.19. In evaluating the eligibility of an applicant, the
18 commission shall consider the creditworthiness of the applicant
19 and the effectiveness of the improvements applying the following
20 criteria, including, but not limited to, all of the following:

21 (a) Whether applicants are legal owners of the underlying
22 property.

23 (b) Whether applicants are current on any outstanding mortgage
24 and property tax payments.

25 (c) Whether applicants are in default or in bankruptcy
26 proceedings.

27 (d) *Whether applicants have applied for incentives available*
28 *through the energy efficiency programs offered by an electrical*
29 *or gas corporation.*

30 ~~(d)~~

31 (e) Whether improvements financed by the program follow
32 applicable standards including any guidelines adopted by the
33 commission.

34 ~~25987.21.~~

35 25987.20. (a) The commission shall approve an application
36 through the adoption of a resolution approving the application and
37 authorizing the recording of the energy remittance repayment
38 agreement on the deed of the eligible property.

1 (b) The resolution shall specify the amount required to be paid
2 to the board pursuant to the energy remittance repayment
3 agreement, the schedule of repayment, and the interest rate charged.

4 (c) The commission shall approve the modification of an
5 approved application through the adoption of a resolution.

6 ~~25987.22.~~

7 25987.21. (a) The energy remittance repayment agreement
8 *that is secured by a lien recorded pursuant to this section, shall*
9 *have the force, effect, and priority of a judgement lien, and shall*
10 *be subordinate to any and all secured mortgage liens recorded*
11 *against the deed of the eligible property at the time of recording*
12 *of the energy remittance repayment agreement.*

13 (b) Except as otherwise required by law, the energy remittance
14 repayment agreement shall be superior in priority to all subsequent
15 liens recorded on the deed of the eligible property *except where*
16 *the first mortgage is refinanced, in which case the energy*
17 *remittance repayment agreement shall remain secondary to the*
18 *primary mortgage.*

19 (c) The sale of the eligible property to enforce the payment of
20 general ad valorem taxes shall not extinguish the energy remittance
21 repayment agreement recorded on the eligible property.

22 (d) In the event of foreclosure, the energy remittance repayment
23 agreement shall not be due and owing during such time when the
24 property is owned by a financial institution taking title by way of
25 foreclosure. The amounts owing pursuant to the energy remittance
26 repayment agreement shall, however, continue to accrue and shall
27 become due 60 days after a new, nonfinancial owner shall take
28 title.

29 (e) Notwithstanding any other law, in the event of a foreclosure
30 of the property, the energy remittance repayment agreement shall
31 not be extinguished, unless the outstanding balance of the energy
32 remittance repayment agreement, including the interest accrued
33 and all penalties and fees assessed prior to the foreclosure, is fully
34 paid through the foreclosure proceeding.

35 ~~25987.23.~~

36 25987.22. (a) Thirty days after the adoption of the resolution,
37 the commission shall forward the resolution, the agreement, and
38 any other information necessary to collect the installment
39 repayments to the board which shall record with the county in
40 which the eligible building is located the energy remittance

1 repayment agreement on the deed of the eligible property. The
2 board shall notify the commission upon the recordation of the
3 energy remittance agreement.

4 (b) Upon 60 days of the notice of recording of the energy
5 remittance repayment agreement, the commission shall include
6 the approved application in a portfolio posted on the commission's
7 Internet Web site.

8 ~~25987.24.~~

9 25987.23. (a) The board shall deposit into the ~~Commercial~~
10 *Nonresidential* Building Energy Retrofit Debt Servicing Fund
11 established pursuant to Section 25987.38 any moneys collected
12 pursuant to this chapter.

13 (b) The board may charge a program administration cost fee on
14 the owner of an eligible building to cover its costs as well as the
15 ~~Treasurer's~~ authority's and the commission's costs in implementing
16 this chapter.

17 (c) Nothing in this chapter shall be construed to require investor
18 owned utilities or municipal utilities to serve in the role as a
19 third-party private guarantor or loan servicer *or otherwise provide*
20 *credit support for the loan program.*

21 ~~25987.25.~~

22 25987.24. (a) A local government that has issued revenue
23 bonds pursuant to a program providing financial assistance to
24 ~~commercial and residential~~ *nonresidential* buildings owners
25 undertaking a renewable energy, water efficiency, or energy
26 efficiency retrofit improvement on the buildings may apply to the
27 commission for participation in the program.

28 (b) Upon the approval of an application submitted by the local
29 government for the building or buildings in which that jurisdiction
30 is located, the commission may purchase all those outstanding
31 revenue bonds issued by the local government.

32 (c) Upon the purchase of the revenue bonds issued by the local
33 government by the commission, the commission succeeds to all
34 rights conferred upon the bondholder by those revenue bonds and
35 the local government shall remit revenue that is used to secure
36 those revenue bonds to the board.

37 ~~25987.26.~~

38 25987.25. (a) The commission ~~shall~~ *may* do all of the
39 following:

40 ~~(a) (1) —~~

1 (1) (A) On or before July 1, 2013, analyze and evaluate
2 standards for ~~commercial~~ *nonresidential* energy building retrofits
3 previously developed by various national and international
4 organizations to provide uniformity and transparency for financial
5 institutions evaluating loan proposals for energy improvements to
6 ~~commercial~~ *nonresidential* properties.

7 ~~(2)–~~

8 (B) The evaluation shall ~~evaluate~~ *review* existing protocols or
9 combination of elements of existing measurement protocols and
10 shall be made available in an electronic format to financial
11 institutions and local governments initiating loans pursuant to this
12 chapter.

13 ~~(b)–~~

14 (2) Establish those standards, guidelines, and procedures,
15 through regulation, including, but not limited to, standards of credit
16 worthiness for qualification of program applicants, that are
17 necessary to ensure the financial stability of the program and
18 otherwise prevent fraud and abuse.

19 (3) *Establish those measurement and verification standards*
20 *necessary to ensure that the energy efficiency improvements*
21 *financed pursuant to this chapter are realized at a level specified*
22 *by the commission.*

23 (4) *Consider reliance on existing trade certifications or licensing*
24 *requirements applicable to occupations that perform the work*
25 *contemplated under this chapter.*

26 ~~(e)–~~

27 (5) Establish qualifications for the certification of contractors
28 to construct or install energy efficiency improvements.

29 ~~(d)–~~

30 (6) Contract with a party, public or private, to do any of the
31 following:

32 ~~(1)–~~

33 (A) Ensure that appropriate *and reasonable* steps are taken to
34 monitor *and verify* the quality *and longevity* of energy efficiency
35 improvements financed pursuant to this division and measure the
36 total energy savings achieved by the program.

37 ~~(2)–~~

38 (B) Monitor the total number of program participants.

39 ~~(3)–~~

1 (C) Determine the ~~total~~ average amount, in aggregate, paid to
2 contractors and financial institutions pursuant to the program.
3 *Notwithstanding the California Public Records Act (Chapter 3.5*
4 *(commencing with Section 6250) of Division 7 of Title 1 of the*
5 *Government Code), upon a finding pursuant to Section 6255 of*
6 *the Government Code that the public interest is served by not*
7 *disclosing information clearly outweighs the public interest served*
8 *by disclosing information, the commission shall not disclose*
9 *payments made by an applicant or a program participant to*
10 *individual contractors or financial institutions.*

11 ~~(4)~~

12 (D) Calculate the number of jobs created by the program, the
13 number of defaults by program participants, and the total losses
14 from the defaults, and calculate the total dollar amount of bonds
15 issued by the commission to reimburse program participants.

16 ~~(e)~~

17 (7) Develop a model energy aligned lease provision that
18 modifies, upon the agreement between the owner and tenants of
19 an eligible building, a commercial lease agreement allowing the
20 owners to recover the costs of the renewable energy, water
21 efficiency, or energy efficiency retrofit improvements that result
22 in operational savings based on the useful life of the retrofit while
23 protecting tenants from underperformance of the energy efficiency
24 improvements.

25 ~~(f)~~

26 (8) Develop a request for proposal to contract with one or more
27 financial institutions to secure a short-term, revolving credit facility
28 (warehouse line of credit) for the purpose of creating an interim
29 financing mechanism for the loans that would be aggregated for
30 the purposes of issuance of a revenue bond pursuant to Section
31 ~~26987.30~~ 25987.29. *The warehouse line of credit shall be drawn*
32 *by the third-party administrator for origination of direct loans to*
33 *qualified applicants. Credit issued under the warehouse line of*
34 *credit shall not be deemed to constitute a debt or liability of the*
35 *state or of any political subdivision thereof, or a pledge of the full*
36 *faith and credit of the state or of any political subdivision, but shall*
37 *be payable solely from the funds provided therefor. All credit*
38 *instruments shall contain a statement to the following effect:*

1 ~~“Neither the faith and credit nor the taxing power of the State~~
2 ~~of California is pledged to the payment of principal and interest~~
3 ~~on this credit instrument.”~~

4
5 ~~The warehouse line of credit shall be drawn by the third-party~~
6 ~~administrator for origination of direct loans to qualified applicants.~~

7 *(9) Adopt a standard notice and disclosure form for the purposes*
8 *of Section 25987.27.*

9 *(b) In implementing this chapter, the commission shall do all*
10 *of the following:*

11 *(1) Consult with the Public Utilities Commission, representatives*
12 *from the investor-owned and publicly owned utilities, local*
13 *governments, real estate licensees, commercial builders,*
14 *commercial property owners, small businesses, financial*
15 *institutions, commercial property appraisers, energy rating*
16 *organizations, and other entities the commission deems*
17 *appropriate.*

18 *(2) Hold at least one public hearing.*

19 *(3) Adopt regulations and standards for the purposes of*
20 *implementing this chapter at a publicly noticed meeting offering*
21 *all interested parties an opportunity to comment. For the initial*
22 *adoption of the regulations and standards, the commission shall*
23 *provide a written public notice at least 30 days prior to the*
24 *meeting. For the adoption of any substantive change to the*
25 *regulations and standards, the commission shall provide a written*
26 *public notice at least 10 days prior to the meeting. Notwithstanding*
27 *any other law, a regulation or standard adopted pursuant to this*
28 *section shall be exempt from the requirements of Chapter 3.5*
29 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
30 *2 of the Government Code.*

31 25987.26. *Credit issued under the warehouse line of credit*
32 *shall not be deemed to constitute a debt or liability of the state or*
33 *of any political subdivision thereof, or a pledge of the full faith*
34 *and credit of the state or of any political subdivision, but shall be*
35 *payable solely from the funds provided therefor. All credit*
36 *instruments shall contain a statement to the following effect:*

37
38 ~~“Neither the faith and credit nor the taxing power of the State~~
39 ~~of California is pledged to the payment of principal and interest~~
40 ~~on this credit instrument.”~~

1
2 25987.27. (a) *From the date upon which financial assistance*
3 *is approved by a resolution of the commission pursuant to Section*
4 *25987.20 and for all subsequent transactions entered into pursuant*
5 *to this chapter, a seller of real property subject to an energy*
6 *remittance repayment agreement shall deliver to the buyer an*
7 *energy remittance repayment agreement notice and disclosure as*
8 *adopted by the commission pursuant to paragraph (9) of*
9 *subdivision (a) of Section 25987.25.*

10 (b) (1) *Upon the delivery of the completed notice and disclosure*
11 *form to the buyer of real property, the seller and his or her agent*
12 *is not required to provide additional information relative to the*
13 *energy remittance repayment agreement.*

14 (2) *The information in the notice and disclosure form is deemed*
15 *sufficient to provide notice to the buyer of the existence of the*
16 *energy improvements, the energy remittance repayment agreement,*
17 *and the repayment obligation that will be assigned to, and assumed*
18 *by, the buyer upon taking title.*

19 ~~25987.27.~~

20 25987.28. No later than June 30, 2014, and no later than June
21 30 of every fifth year thereafter, the State Auditor shall conduct,
22 or cause to be conducted, a performance audit of the program. The
23 State Auditor shall prepare a report and recommendations on each
24 audit conducted and present the report and recommendations to
25 the President pro Tempore of the Senate and the Speaker of the
26 Assembly.

27
28 Article 3. ~~Commercial~~ Nonresidential Building Energy Retrofit
29 Bond
30

31 ~~25987.28.~~

32 25987.29. ~~The Treasurer~~ *authority*, on behalf of the
33 commission, may incur indebtedness and issue and renew
34 negotiable bonds, notes, debentures, or other securities of any kind
35 or class. All indebtedness, however evidenced, shall be payable
36 solely from moneys received pursuant to this chapter and the
37 proceeds of its negotiable bonds, notes, debentures, or other
38 securities and shall not exceed the sum of two billion dollars
39 (\$2,000,000,000).

1 ~~25987.29.~~

2 25987.30. The Legislature may, by statute, authorize the
3 ~~Treasurer authority~~ to issue bonds, as defined in Section ~~26987.30~~
4 25987.31 in excess of the amount provided in Section ~~26987.28~~
5 25987.29.

6 ~~25987.30.~~

7 25987.31. (a) On a semiannual basis, the ~~commission~~ *authority*
8 shall conduct a meeting for the purpose of authorizing the issuance
9 of, by the adoption of a resolution, negotiable bonds, notes,
10 debenture, or other securities (collectively called “bonds”) for the
11 purposes of generating sufficient moneys to fund the approved
12 applications in the portfolio at the time of the meeting or to repay
13 an outstanding balance of *the* participant on whose behalf the
14 commission has provided funds through the warehouse line of
15 credit. In anticipation of the sale of bonds as authorized by Section
16 ~~26987.28~~ 25987.29, or as may be authorized pursuant to Section
17 ~~26987.29~~ 25987.30, the ~~Treasurer authority~~, on behalf of the
18 commission, may issue negotiable bond anticipation notes and
19 may renew the notes from time to time. The bond anticipation
20 notes may be paid from the proceeds of sale of the bonds of the
21 ~~Treasurer authority~~ in anticipation of which they were issued.
22 Notes and agreements relating to the notes and bond anticipation
23 notes (collectively called “notes”) and the resolution or resolutions
24 authorizing the notes may contain any provisions, conditions, or
25 limitations that a bond, agreement relating to the bond, and bond
26 resolution of the ~~commission~~ *authority* may contain. However, a
27 note or renewal of the note shall mature at a time not exceeding
28 two years from the date of issue of the original note.

29 (b) Every issue of its bonds, notes, or other obligations shall be
30 general obligations of the ~~Treasurer authority~~ or commission
31 payable from revenues or moneys received pursuant to this chapter.
32 Notwithstanding that the bonds, notes, or other obligations may
33 be payable from a special fund, ~~they~~ *that* are for all purposes
34 negotiable instruments, subject only to the provisions of the bonds,
35 notes, or other obligations for registration.

36 (c) Subject to the limitations in Sections ~~26987.28~~ 25987.29
37 and ~~26987.29~~ 25987.30, the bonds may be issued as serial bonds
38 or as term bonds, or the ~~Treasurer authority~~ in its discretion, may
39 issue bonds of both types. The bonds shall be authorized by
40 resolution of the ~~Treasurer authority~~ *or* commission and shall bear

the date or dates, mature at the time or times, not exceeding 30 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to terms of redemption, as the resolution or resolutions may provide. The sales may be a public or private sale, and for the price or prices and on the terms and conditions, as the ~~Treasurer~~ *authority* shall determine after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes. Pending preparation of the definitive bonds, the ~~Treasurer~~ *authority* may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The ~~Treasurer~~ *authority* may sell bonds, notes, or other evidence of indebtedness at a price below their par value. However, the discount on a security sold pursuant to this section shall not exceed 6 percent of the par value.

(d) A resolution or resolutions authorizing bonds or an issue of bonds may contain provisions that shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the moneys collected pursuant to this chapter from the portfolio of approved applications that are funded by the bonds, to secure the payment of the bonds or of any particular issue of bonds, subject to the agreements with bondholders as may then exist.

(2) The setting aside of reserves or sinking funds, and the regulation and disposition of the reserves or sinking funds.

(3) Limitations on the right of the ~~Treasurer~~ *authority* or the commission or their agent to restrict and regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(4) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied and pledging those proceeds to secure the payment of the bonds or the issue of the bonds.

(5) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

1 (6) The procedure, if any, by which the terms of a contract with
2 bondholders may be amended or abrogated, the amount of bonds
3 the holders of which must consent to the amendment or abrogation,
4 and the manner in which that consent may be given.

5 (7) Limitations on expenditures for operating, administrative,
6 or other expenses of the ~~Treasurer~~ *authority* or commission.

7 (8) Defining the acts or omissions to act that constitute a default
8 in the duties of the ~~Treasurer~~ *authority* or commission to holders
9 of its obligations and providing the rights and remedies of the
10 holders in the event of a default.

11 (e) Neither the ~~Treasurer~~ *authority*, the commission, or a person
12 executing the bonds or notes shall be liable personally on the bonds
13 or notes or be subject to personal liability or accountability by
14 reason of the issuance of the bond or note.

15 (f) The ~~Treasurer~~ *authority* shall have power out of any funds
16 available for these purposes to purchase its bonds or notes. The
17 ~~Treasurer~~ *authority* may hold, pledge, cancel, or resell those bonds,
18 subject to and in accordance with agreements with bondholders.

19 (g) The commission, the ~~Treasurer~~ *authority*, and the board shall
20 may enter into a memorandum of understanding providing for the
21 transfer of energy remittance payments between the three agencies
22 in furtherance of this chapter.

23 (h) Should there be insufficient project valuation or insufficient
24 demand for the revenue bonds authorized by this chapter, the board
25 shall continue to collect the energy remittance payments and
26 service the loans. Failure to sell the revenue bonds shall not create
27 any liability for the state.

28 ~~25987.31.~~

29 25987.32. In the discretion of the ~~Treasurer~~ *authority*, any
30 bonds issued under the provisions of this article may be secured
31 by a trust agreement by and between the ~~Treasurer~~ *authority* and
32 a corporate trustee or trustees, which may be the ~~Treasurer~~
33 *authority* or any trust company or bank having the powers of a
34 trust company within or without the state. Such trust agreement
35 or the resolution providing for the issuance of such bonds may
36 pledge or assign the revenues to be received pursuant to this
37 chapter, to be financed out of the proceeds of such bonds. Such
38 trust agreement or resolution providing for the issuance of such
39 bonds may contain such provisions for protecting and enforcing
40 the rights and remedies of the bondholders as may be reasonable

1 and proper and not in violation of law, including particularly such
2 provisions as have herein above been specifically authorized to be
3 included in any resolution or resolutions of the commission
4 authorizing bonds thereof. Any bank or trust company doing
5 business under the laws of this state which may act as depositary
6 of the proceeds of bonds or of revenues or other moneys may
7 furnish such indemnifying bonds or pledge such securities as may
8 be required by the ~~Treasurer~~ authority. Any such trust agreement
9 may set forth the rights and remedies of the bondholders and of
10 the trustee or trustees, and may restrict the individual right of action
11 by bondholders. In addition to the foregoing, any such trust
12 agreement or resolution may contain such other provisions as the
13 ~~Treasurer~~ authority may deem reasonable and proper for the
14 security of the bondholders. Notwithstanding any other law, the
15 ~~Treasurer~~ authority shall not be deemed to have a conflict of
16 interest by reason of acting as trustee pursuant to this chapter.

17 ~~25987.32.~~

18 25987.33. Bonds issued under the provisions of this article
19 shall not be deemed to constitute a debt or liability of the state or
20 of any political subdivision thereof, other than the authority, or a
21 pledge of the faith and credit of the state or of any such political
22 subdivision, but shall be payable solely from the funds herein
23 provided therefor. All such bonds shall contain on the face thereof
24 a statement to the following effect: "Neither the faith and credit
25 nor the taxing power of the State of California is pledged to the
26 payment of the principal of or interest on this bond." The issuance
27 of bonds under the provisions of this article shall not directly or
28 indirectly or contingently obligate the state or any political
29 subdivision thereof to levy or to pledge any form of taxation
30 whatever therefor or to make any appropriation for their payment.
31 Nothing contained in this section shall prevent or be construed to
32 prevent the ~~Treasurer~~ authority from pledging its full faith and
33 credit to the payment of bonds or issue of bonds authorized
34 pursuant to this chapter.

35 ~~25987.33.~~

36 25987.34. (a) The ~~Treasurer~~ authority is hereby authorized to
37 provide for the issuance of bonds of the ~~Treasurer~~ authority for
38 the purpose of refunding any bonds, notes, or other securities of
39 the ~~Treasurer~~ authority then outstanding, including the payment
40 of any redemption premium thereon and any interest accrued or

1 to accrue to the earliest or subsequent date of redemption, purchase,
2 or maturity of such bonds.

3 (b) The proceeds of any such bonds issued for the purpose of
4 refunding outstanding bonds, notes, or other securities may, in the
5 discretion of the ~~Treasurer~~ *authority*, be applied to the purchase
6 or retirement at maturity or redemption of such outstanding bonds
7 either on their earliest or any subsequent redemption date or upon
8 the purchase or retirement at the maturity thereof and may, pending
9 such application, be placed in escrow to be applied to such purchase
10 or retirement at maturity or redemption on such date as may be
11 determined by the ~~Treasurer~~ *authority*.

12 (c) Pending such use, any such escrowed proceeds may be
13 invested and reinvested by the ~~Treasurer~~ *authority* in obligations
14 of, or guaranteed by, the United States of America, or in certificates
15 of deposit or time deposits secured by obligations of, or guaranteed
16 by, the United States of America, maturing at such time or times
17 as shall be appropriate to ensure the prompt payment, as to
18 principal, interest, and redemption premium, if any, of the
19 outstanding bonds to be so refunded. The interest, income, and
20 profits, if any, earned or realized on any such investment may also
21 be applied to the payment of the outstanding bonds to be so
22 refunded. After the terms of the escrow have been fully satisfied
23 and carried out, any balance of such proceeds and interest, income,
24 and profits, if any, earned or realized on the investments thereof
25 may be returned to the authority for use by it in any lawful manner.

26 (d) All such bonds shall be subject to the provisions of this
27 division in the same manner and to the same extent as other bonds
28 issued pursuant to this chapter.

29 ~~25987.34.~~

30 25987.35. Bonds issued by the ~~Treasurer~~ *authority* are legal
31 investments for all trust funds, the funds of all insurance
32 companies, banks, both commercial and savings, trust companies,
33 savings and loan associations, and investment companies, for
34 executors, administrators, trustees, and other fiduciaries, for state
35 school funds, and for any funds which may be invested in county,
36 municipal, or school district bonds, and such bonds are securities
37 which may properly and legally be deposited with, and received
38 by, any state or municipal officer or agency or political subdivision
39 of the state for any purpose for which the deposit of bonds or
40 obligations of the state, is now, or may hereafter be, authorized by

1 law, including deposits to secure public funds if, and only to the
2 extent that, evidence of indebtedness or debt securities of the
3 participating party receiving financing through the issuance of
4 such bonds qualify or are eligible for such purposes and uses.

5 ~~25987.35.~~

6 25987.36. The state hereby pledges and agrees with the holders
7 of the bonds and with a participant with an approved application
8 that the state will not limit, alter, restrict, or impair the rights vested
9 in the ~~Treasurer authority~~ or the commission or the rights or
10 obligations of a person or entity with which the commission
11 contracts to fulfill the terms of an agreement made pursuant to this
12 chapter. The state further agrees that it will not in any way impair
13 the rights or remedies of the holder of the bonds until the bonds
14 have been paid or until adequate provision for payment has been
15 made. The ~~Treasurer authority~~ may include this provision and
16 undertaking for the ~~Treasurer authority~~ in its bonds.

17 ~~25987.36. No liability shall be incurred by the Treasurer or the~~
18 ~~commission beyond the extent to which moneys have been~~
19 ~~provided under this chapter; except that for the purposes of meeting~~
20 ~~the necessary expenses of initial organization and operation until~~
21 ~~such date as the Treasurer derives revenues or proceeds from bonds~~
22 ~~or notes as provided under this chapter, the Treasurer may borrow~~
23 ~~money as needed for such expenses from the State Energy~~
24 ~~Resources Conservation and Development Special Account in the~~
25 ~~General Fund in the State Treasury. Such borrowed moneys shall~~
26 ~~be repaid with interest within a reasonable time after the Treasurer~~
27 ~~receives revenues or proceeds from bonds or notes as provided~~
28 ~~under this chapter.~~

29 25987.37. (a) Bonds issued pursuant to this division shall be
30 exempt from all taxation and assessment imposed pursuant to state
31 law.

32 (b) No later than February 1, 2013, the commission shall apply
33 to the United States Department of the Treasury under the Energy
34 Tax ~~Incentive~~ *Incentives* Act of 2005 (Title XIII of Public Law
35 109-58) for the ~~Treasurer authority~~ to issue tax advantage bonds
36 under the federal Clean Renewable Energy Bonds program or any
37 other applicable programs.

1 Article 4. ~~Commercial~~ *Nonresidential* Building Energy Retrofit
2 Debt Servicing Fund
3

4 25987.38. (a) The ~~Commercial~~ *Nonresidential* Building Energy
5 Retrofit Debt Servicing Fund is hereby established in the State
6 Treasury. Notwithstanding Section 13340 of the Government Code,
7 the moneys in the fund are hereby continuously appropriated to
8 the ~~Treasurer~~ *authority* without regard to fiscal year for the
9 purposes of paying the principal and interest on bonds issued by
10 the ~~Treasurer~~ *authority* pursuant to Section ~~26987.28~~ 25987.29,
11 servicing the warehouse line of credit, and defraying any direct
12 and indirect costs incurred by the Treasurer in executing duties
13 required by this chapter.

14 (b) All interest and income derived from the deposit and
15 investment of moneys in the fund shall be credited to the fund,
16 and all unexpended and unencumbered moneys in the fund at the
17 end of any fiscal year shall remain in the fund.

18 25987.39. The Loan Loss Reserve Account is hereby
19 established in the ~~Commercial~~ *Nonresidential* Building Energy
20 Retrofit Debt Servicing Fund. The board shall deposit the portion
21 of the contractual energy remittance that is the loan loss reserve
22 fee into the account. Notwithstanding Section 13340 of the
23 Government Code, the moneys in the account are hereby
24 continuously appropriated to the ~~Treasurer~~ *authority* without regard
25 to fiscal year for the purposes of paying outstanding balances due
26 under an energy remittance repayment agreement on a building
27 that has been foreclosed upon if the proceeds generated from the
28 foreclosure proceedings are insufficient to pay any past due
29 payments past due under the energy remittance repayment
30 agreement, including accrued interest, penalties, and fees. All
31 interest and income derived from the deposit and investment of
32 moneys in the account shall be credited to the account, and all
33 unexpended and unencumbered moneys in the account at the end
34 of any fiscal year shall remain in the account.

35 25987.40. The Administration Account is hereby established
36 in the ~~Commercial~~ *Nonresidential* Building Energy Retrofit Debt
37 Servicing Fund. The ~~Treasurer~~ *authority* shall deposit into the
38 account the program administration fee collected pursuant to
39 subdivision (b) of Section ~~25987.24~~ 25987.23 and penalties
40 collected pursuant to Section 25987.16. Notwithstanding Section

1 11340 of the Government Code, moneys in the account shall be
2 continuously appropriated to the ~~Treasurer~~ authority, the
3 commission, and the board for the costs of implementing this
4 chapter.

5 25987.41. (a) The Director of Finance shall transfer, as a loan,
6 up to ~~_____ dollars (\$_____)~~ one million dollars (\$1,000,000) from the
7 General Fund to the board to implement ~~the collection of the energy~~
8 ~~remittance repayment~~ this chapter.

9 (b) The Director of Finance shall transfer, as a loan, up to seven
10 million dollars (\$7,000,000) from the General Fund to the
11 commission to implement this chapter.

12 ~~(b)~~
13 (c) Any loan made pursuant to this section shall be repaid on
14 or before ~~_____~~ January 1, 2023, with interest at the pooled money
15 investment rate, from energy remittance repayment collected
16 pursuant to this chapter.

17 (d) *If the fees authorizes for collection pursuant to subdivision*
18 *(b) of Section 25987 are not sufficient to support the loans made*
19 *pursuant to this section, the Director of Finance shall discuss*
20 *alternative repayment terms with the borrowing agencies.*

21 25987.42. (a) The commission, the board, and the ~~Treasurer~~
22 authority shall be authorized to promulgate necessary regulations
23 to implement and administer this chapter.

24 (b) *Regulations for the purposes of implementing this chapter*
25 *shall be adopted by the commission, board, or authority at a*
26 *publicly noticed meeting offering all interested parties an*
27 *opportunity to comment. For the initial adoption of the regulations*
28 *and standards, the commission shall provide a written public notice*
29 *at least 30 days prior to the meeting. For the adoption of any*
30 *substantive change to the regulations and standards, the*
31 *commission shall provide a written public notice at least 10 days*
32 *prior to the meeting. Notwithstanding any other law, a regulation*
33 *or standard adopted pursuant to this section shall be exempt from*
34 *the requirements of Chapter 3.5 (commencing with Section 11340)*
35 *of Part 1 of Division 3 of Title 2 of the Government Code.*